



**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)**

CASES NOS.: 7167/2006  
AND 10558/2006

In the consolidated matter between

**UNITRANS MOTORS (PTY) LTD.  
TRADING AS WILLIAMS HUNT MIDRAND**

**First plaintiff**

**VAN COPPENHAGEN, HENDRIK LINDENBERG**

**Second plaintiff**

**and**

**NOORMOHAMMED, ZUNAID  
RS TRADERS CC  
HYH MOTOR CITY CC  
MOHAMMED RIDWAAN JOOSUB  
YASIN HASSIM  
SHOAYB YUSAB**

**First defendant  
Second defendant  
Third defendant  
Fourth defendant  
Fifth defendant  
Sixth defendant**

**CORAM EBERSOHN AJ**

**DATES MATTER HEARD: October 28th, 29th, 30th and 31st, November 3rd  
and 4th, 2008**

**DATE JUDGMENT HANDED DOWN: 9th January 2009.**

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**JUDGMENT**

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**EBERSOHN AJ.**

[1] The two separate actions the two plaintiff's instituted against the same defendants were consolidated into one and the consolidated case went on trial in this court.

[2] (a) The first plaintiff will be referred to as "Williams Hunt" in this judgment and the second plaintiff will be referred to as "Van Copenhagen".

(b) The first defendant will be referred to as "Noormohammed".

(c) The second defendant RS Traders CC will be referred to as "RS Traders". According to the Form CK2 of RS Traders CC one Mohammed Ridwaan Joosub, who is the fourth defendant, became the holder of a 100% interest in RS Traders as from the 27nd May 2005. Joosub acquired his share from one Mahomed Iqubal Joosub.

(d) The third defendant is HYH Motor City CC and will be referred to as HYH. According to the Form CK2 one Yaseen Hassim, who is the fifth defendant, and who will be referred to herein as "Hassim", became the holder of 100% interest in HYH as from the 22nd May 2005.

(e) It is common cause that Mohammed Ridwaan Joosub, of RS Traders, is the brother of Shoayb Joosub, the sixth defendant, who is employed by HYH in Standerton and Pretoria.

(f) Mohammed Ridwaan Joosub was present in court for the duration of the trial and he quite often consulted with Mr. Omar, the legal representative of the 2nd to the 6th defendants, and would give instructions to Mr. Omar during the trial in court.

[3] It is common cause that Noormohammed sold an Opel Astra car to Williams Hunt and was paid the purchase price of R170 00,00 for it.

[4] It is also common cause that Noormohammed sold a Mercedes Benz car to van Copenhagen and he was paid the purchase price for it.

[5] It is also common cause that HYH, with an address in Standerton, instituted an action based on the rei vindicatio and brought an application in the magistrate's court at Delmas against RS Traders, whose address is in Pretoria, wherein HYH obtained a court order, by agreement between HYH and RS Traders, empowering the Sheriff to attach the Opel Astra car and the Mercedes Benz car, which the Sheriff duly did. This

gave rise to number of actions. The deponent to the affidavit filed on behalf of HYH in support of that application was Shoayb Joosub, the brother of Mohammed Ridwaan Joosub, who acted all along for and on behalf of RS Traders. This affidavit is to be found in bundle D pages 72-77. How it came about that the said application was brought in the Delmas Magistrate's Court, was left unexplained by the parties to the application and by their attorney Mr. Omar who appeared for the second to the sixth defendants but absented himself during argument stage and subsequently withdrew as their attorney.

[6] The two plaintiffs alleged that the second to the sixth defendants perpetrated a fraudulent scheme against them. They also, obviously rely on authorities regarding estoppel.

[7] Paragraphs 18 to 24 of the particulars of claim of the summons issued by Williams Hunt against the defendants read as follows:

- "18. The first Defendant represented to the Plaintiff that he was the owner of the vehicle.**
- 19. The aforesaid representation was material and it induced the Plaintiff to enter into the Agreement of Sale with the First Defendant.**
- 20. The representation that the First Defendant was the owner of the vehicle was false and fraudulent in nature in that the Third Defendant was the true owner of the vehicle and the First Defendant was at all material times aware thereof.**
- 21. The Second Defendant, duly represented by the Fourth Defendant, placed the First Defendant in possession of the vehicle, with full knowledge of the fact that the Third Defendant was the owner of the vehicle and with full knowledge of the fact that the fact that the First Defendant would, alternatively could defraud innocent third parties, such as the Plaintiff, as set out hereinabove.**
- 22. The Third Defendant, duly represented by the Fifth Defendant and/or the Sixth Defendant, placed the Second Defendant, duly represented as aforesaid, in possession of the vehicle with full knowledge of the fact that the Second Defendant would, alternatively could place the First Defendant in possession of the**

vehicle and that the First Defendant would, alternatively could defraud third parties, such as the Plaintiff, as set out hereinabove.

23. The fraud perpetrated on the Plaintiff, as set out hereinabove, was perpetrated in collusion between the First, Second, Third, Fourth, Fifth and Sixth Defendants, the Second Defendant being duly represented by the Fourth Defendant and the Third Defendant being duly represented by the Fifth and/or Sixth Defendant.
24. As a result of the First, Second, Third, Fourth, Fifth and/or Sixth Defendant's fraudulent conduct as aforesaid, the Plaintiff has suffered damages in the amount of R170 000.00, representing the purchase price paid by the Plaintiff to the First Defendant in terms of the Agreement of Sale."

[8] Paragraphs 19 to 46 and the prayers in van Coppenhagen's particulars of claim read as follows:

**"PLAINTIFF'S CLAIM "B" AGAINST THE SECOND, THIRD, FOURTH, FIFTH AND SIXTH DEFENDANTS:**

18. In the alternative to claim "A", and in the event that the Court should find that the third defendant's claim to the motor vehicle is not unassailable, the plaintiff claims against the second, third, fourth, fifth and sixth defendants as follows.
19. During November 2005 the plaintiff and the first defendant concluded an oral agreement in terms whereof the plaintiff purchased a Mercedes Benz C240 Elegance motor vehicle with registration number SZW 710 GP, with engine number 11291230883158 and with chassis number WDC 2030612 R009 895 ("the motor vehicle") from the first defendant for the sum of R141 000.00.
20. Prior to concluding the aforesaid agreement.:
  - 20.1 the plaintiff specifically asked the first defendant whether or not he was the owner of the motor vehicle; and

**20.2** the first defendant handed to the plaintiff inter alia the original certificate of registration of the motor vehicle in terms of the National Road Traffic Act 93 of 1996 reflecting the third respondent as owner and titleholder of the motor vehicle and verbally informed the plaintiff that:

**20.2.1** the first defendant had purchased the motor vehicle from the second defendant;

**20.2.2** the first defendant had paid the purchase price in full to the second defendant;

**20.2.3** the first defendant was the owner of the motor vehicle;

**20.2.4** the first defendant had obtained the aforementioned certificate of registration of the motor vehicle from the second defendant when the first defendant had purchased the motor vehicle from the second defendant; and

**20.2.5** the plaintiff could contact the second defendant in order to obtain its verification of the truth of the aforementioned facts.

**21.** The plaintiff promptly contacted the second defendant telephonically and spoke to the fourth defendant. The plaintiff informed the fourth defendant that he intended purchasing the motor vehicle from the first defendant, and of the facts mentioned in paragraph 20.2 hereof, and of the content of his conversation with the first defendant mentioned in paragraphs 20.2.1 to 20.2.5 hereof.

**22.** The fourth defendant, acting in the course and scope of his employment with the second defendant, alternatively acting personally:

**22.1** verbally confirmed to the plaintiff the correctness of the facts mentioned in paragraph 20.2 hereof, and of the content of the plaintiff's conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof; and

**22.2 verbally informed the plaintiff that:**

- 22.2.1 the second defendant had in turn purchased the motor vehicle from the third defendant;**
- 22.2.2 the second defendant had paid the purchase price in full to the third defendant;**
- 22.2.3 the second defendant had obtained the aforementioned certificate of registration of the motor vehicle from the third defendant when the second defendant had purchased the motor vehicle from the third defendant;**
- 22.2.4 when the second defendant had sold the motor vehicle to the first defendant, the second defendant had been the owner of the motor vehicle; and**
- 22.2.5 the plaintiff could contact the third defendant in order to obtain its verification of the truth of the aforementioned facts.**

**23. The plaintiff promptly contacted the third defendant telephonically and spoke to he fifth defendant. The plaintiff informed the fifth defendant that he intended purchasing the motor vehicle from the first defendant, and of the facts mentioned in paragraph 20.2 hereof, and of the contents of his conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof, and of the contents of his conversation with the fourth defendant as mentioned in paragraphs 22.1 and 22.2 (in toto) hereof.**

**24. The fifth defendant, acting in the course and scope of his employment with the third defendant, alternatively, acting personally:**

- 24.1 verbally confirmed to the plaintiff the correctness of the facts mentioned in paragraph 20.2 hereof, and of the contents of his conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof, and of the content of the plaintiffs conversation with the fourth defendant as mentioned in paragraphs 22.1 and 22.2, 22.2.1, 22.2.2, 22.2.3, 22.2.4 and 2.2.5 hereof; and**

- 24.2** sent to the plaintiff written confirmation of the fact that the third defendant had sold the motor vehicle to the second defendant and that the second defendant had paid to the third defendant the full purchase price of the motor vehicle. A true copy of this written confirmation is annexed hereto as annexure "HLVC1".
- 25.** Relying on the truth of what had been told to him as set out above by the first defendant, and the fourth defendant, acting in the course and scope of his employment with the second defendant, alternatively, acting personally, and the fifth defendant, acting in the course and scope of his employment with the third defendant, alternatively, acting personally, the plaintiff paid the purchase price in full to the first defendant and the first defendant delivered the motor vehicle to the plaintiff during November 2005.
- 26.** The plaintiff repeats paragraphs 10, 11 and 12 hereof as if specifically pleaded.
- 27.** On 20 January 2006 the third defendant (as plaintiff) instituted action against the second defendant (as defendant) by issuing summons out the Magistrates' court for the District of Delmas under case number 26/2006 wherein the third defendant claimed inter alia the return of the motor vehicle from the second defendant together with its registration papers. In its particulars of claim the third defendant made inter alia the following averments:
- 27.1** the third defendant was the owner of the motor vehicle;
- 27.2** the second defendant was in possession of the motor vehicle; and
- 27.3** the second defendant had consented to the jurisdiction of the court in respect of the amount claimed in the summons and that the court may exercise jurisdiction over it's (the second defendant's) person.
- 28.** When the third defendant instituted the aforesaid action against the second defendant the third defendant was aware that:
- 28.1** the averments made in the particulars of claim as mentioned in paragraphs 27.1, 27.2 and 27.3 hereof were untrue;

- 28.2 it had sold the motor vehicle to the second defendant;**
- 28.3 the second defendant had paid the purchase price in full to it;**
- 28.4 the second defendant had sold the motor vehicle to the first defendant;**
- 28.5 the first defendant had paid the purchase price in full to the second defendant;**
- 28.6 when the second defendant had sold the motor vehicle to the first defendant the second defendant had been the owner of the motor vehicle;**
- 28.7 the plaintiff had wanted to purchase the motor vehicle from the first defendant;**
- 28.8 prior to purchasing the motor vehicle from the first defendant the plaintiff had contacted the second defendant telephonically and had spoken to the fourth defendant;**
- 28.9 the plaintiff had informed the fourth defendant that he intended purchasing the motor vehicle from the first defendant, and of the facts mentioned in paragraph 20.2 hereof, and of the contents of his conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof;**
- 28.10 the fourth defendant had verbally confirmed to the plaintiff the correctness of the facts mentioned in paragraph 20.2 hereof, and of the contents the plaintiff's conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof, and had informed the plaintiff of the facts as mentioned in paragraphs 22.1 and 22.2, 22.2.1, 22.2.2, 22.2.3, 2.2.4 and 2.2.5 hereof; 2**
- 28.11 the plaintiff had contacted the third defendant telephonically and had spoken to fifth defendant;**
- 28.12 the plaintiff had informed the fifth defendant that he intended purchasing the motor vehicle from the first defendant, and of the**



**facts mentioned in paragraph 20.2 hereof, and of the contents of his conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof, and of the contents of his conversation with the fourth defendant as mentioned in paragraphs 22.1 and 22.2, 22.2.1, 22.2.2, 22.2.3, 22.2.4 and 22.2.5 hereof;**

**28.13 the fifth defendant had:**

**28.13.1 verbally confirmed to the plaintiff the correctness of the facts mentioned in paragraph 20.2 hereof, and of the contents of his conversation with the first defendant as mentioned in paragraphs 20.2.1 to 20.2.5 hereof, and of the content of the plaintiff's conversation with the fourth defendant as mentioned in paragraphs 22.1 and 22.2, 22.2.1, 22.2.2, 22.2.3, 22.2.4 and 22.2.5 hereof; and**

**28.13.2 sent to the plaintiff written confirmation of the fact that the third defendant had sold the motor vehicle to the second defendant and that the second defendant had paid to the third defendant the full purchase price of the *motor* vehicle, a true copy whereof is annexed hereto as annexure "HLVC 1".**

**28.14 the plaintiff had a direct and material interest in and to the subject after of the action, being the motor vehicle, and should have been joined as defendant in the aforesaid action.**

**29. Despite the fact that when the third defendant instituted the aforesaid action against the second defendant the third defendant was aware of the facts as mentioned in paragraphs 28.1 to 28.14 hereof:**

**29.1 the third defendant deliberately failed to disclose the facts as mentioned in paragraphs 28.1 to 28.14 hereof to the court; and**

**29.2 the third defendant deliberately failed to join the plaintiff as a defendant in the aforesaid action.**

**30. Further, at the time that the aforesaid action was instituted by the third**

defendant against the second defendant in the Magistrates' Court for the District of Delmas:

- 30.1 the third defendant did not reside nor carry on business within that courts area of jurisdiction; and
  - 30.2 the second defendant did not reside nor carry on business within that courts area of jurisdiction; and
  - 30.3 the motor vehicle was not within that court's area of jurisdiction.
31. Despite the fact that when the third defendant instituted the aforesaid action against the second defendant the third defendant was aware of the facts a mentioned in paragraphs 30.1 to 30.3 hereof, the third defendant deliberately ailed to disclose such facts to the court.
32. On the same day that it instituted the aforesaid action against the second defendant, the third defendant, as applicant, launched an application out of the same court under the same case number, to be heard on that day at 14hOO, against the second defendant, as respondent, wherein the third defendant claimed inter alia the return of the motor vehicle from the second defendant together with its registration papers. In its affidavit in support of the aforesaid application, which was deposed to on that same day by the sixth defendant, acting within the course and scope of his employment with the third defendant, alternatively, acting personally, the sixth defendant made inter alia the following averments:
- 32.1 he was the duly authorised agent of the third defendant;
  - 32.2 the third defendant was the owner of the motor vehicle;
  - 32.3 during or about November 2005 third defendant had sold the motor vehicle to the second defendant for a purchase price of R155 00.00;
  - 32.4 that "[t]he material terms of the agreement concluded between Applicant [third defendant] and Respondent [second defendant] were that Applicant (sic) would pay to Respondent (sic) the aforesaid purchase price within seven days of the date of the annexed invoices.";

- 32.5** that "[a] further term of the agreement was that the Applicant reserved ownership over the aforementioned motor vehicle until the full purchase price as reflected above was paid by the Respondent. Respondent undertook to hand over cheques to Applicant, but failed to do so.";
- 32.6** the second defendant had failed, refused or neglected to pay the third defendant and despite demand, had persisted in its failure;
- 32.7** the third defendant had cancelled the agreement;
- 32.8** the third defendant had requested the return of the motor vehicle but that the second defendant had refused or neglected to return same;
- 32.9** the second defendant had no rights to the motor vehicle and that the exclusive rights thereto vested in the third defendant;
- 32.10** the second defendant was a motor dealer and that "I expect that Respondent will dispose of the motor vehicles without my consent. If I give the Respondent notice of these proceedings, we (sic) will surely dispose of same."
- 33.** When the third defendant launched the aforesaid application against the second defendant, and when the sixth defendant deposed to the aforesaid affidavit in support of the application, the third defendant and the sixth defendant were aware:
- 33.1** the averments made in the founding affidavit as mentioned in paragraphs 32.2 and 32.4 to 32.10 hereof were untrue;
- 33.2** of those facts as mentioned in paragraphs 28.1 to 28.14 hereof.
- 34.** Despite the fact that when the third defendant launched the aforesaid application against the second defendant, and when the sixth defendant deposed to the aforesaid affidavit in support of the application, the third defendant and the sixth defendant were aware of the facts as mentioned in paragraphs 33.1 and 33.2 hereof:

- 34.1 the third defendant and the sixth defendant deliberately failed to disclose the facts as mentioned in paragraphs 33.1 and 33.2 hereof to the court;
  - 34.2 the third defendant deliberately failed to join the plaintiff as a respondent in the aforesaid application.
- 35. Further, at the time that the aforesaid application was launched by the third defendant against the second defendant in the Magistrates' Court for the district of Delmas:
  - 35.1 the third defendant did not reside nor carry on business within that courts area of jurisdiction;
  - 35.2 the second defendant did not reside nor carry on business within that courts area of jurisdiction; and
  - 35.3 the motor vehicle was not within that court's area of jurisdiction.
- 36. Despite the fact that when the third defendant launched the aforesaid application against the second defendant, and when the sixth defendant deposed to the aforesaid affidavit in support of the application, the third defendant and the sixth the third defendant (sic) were aware of the facts set out in paragraphs 35.1 to 35.3 hereof, the third defendant and the sixth defendant deliberately failed to disclose such facts to the court.
- 37. On 23 January 2006 the third defendant and the second defendant concluded an agreement in terms whereof they purported to settle the dispute in the abovementioned action between them. In this settlement agreement the parties agreed *inter alia* as follows:
  - 37.1 the second defendant confirmed and agreed that the third defendant was the owner of *inter alia* the motor vehicle;
  - 37.2 the second defendant agreed and confirmed that "an order be issued for the recovery of the aforementioned vehicles together with their registration papers and that the sheriff of the court in whose jurisdiction the vehicles and registration papers be found, be ordered to seize them and deliver same to the plaintiff [third defendant]/Plaintiffs representatives." sic); and

- 37.3 that the agreement be made an order of court.**
- 38. When the third defendant and the second defendant concluded the aforesaid settlement agreement the third defendant and the second defendant were aware:**
  - 38.1 that the averment made in the settlement agreement as mentioned in paragraph 37.1 hereof was untrue;**
  - 38.2 of the facts as set out in paragraphs 28.1 to 28.14 hereof; and**
  - 38.3 that the third defendant was not entitled to any of the relief claimed by him in the summons and as agreed to by the third defendant and the second defendant.**
- 39. Despite the fact that when the third defendant and the second defendant concluded the aforesaid settlement agreement the third defendant and the second defendant were aware of the facts mentioned in paragraphs 38.1 to 38.3 hereof, the third defendant and the second defendant deliberately failed to disclose such facts to the court.**
- 40. On 24 January 2006 the aforesaid settlement agreement was made an order of court by the Magistrates' Court for the District of Delmas.**
- 41. On or about 24 January 2006 a warrant was issued out of Magistrates' Court for the District of Delmas for the attachment and removal of the motor vehicle by the sheriff in whose area of jurisdiction it was to be found, together with its registration papers, and for the restoration of same to the third defendant.**
- 42. On or about 26 January 2006 the Sheriff of the Court attached the motor vehicle, removed it from the possession of van den Heever, and gave possession thereof to the third defendant, alternatively the second defendant.**
- 43. Pursuant to the aforesaid attachment:**
  - 43.1 van den Heever cancelled the agreement that had been concluded between himself and the plaintiff and demanded the return of the**

**aforesaid trade-in motor vehicle; and**

**43.2 ABSA Bank Ltd demanded the repayment of the sum of R156 121,94 from the plaintiff.**

**44. The plaintiff, as he was bound to do:**

**44.1 returned the aforesaid trade-in motor vehicle to van den Heever; and**

**44.2 repaid ABSA Bank Ltd the sum of R156 121.94.**

**45. By acting in the manner as set out herein the second, third, fourth, fifth and sixth, defendants:**

**45.1 colluded with each other in order to conduct a fraudulent scheme in order to gain possession of the motor vehicle for the third, alternatively, the second defendant in circumstances where neither the third nor the second defendants were entitled to possession of the motor vehicle;**

**45.2 colluded with each other in order to obtain an order from the Magistrates' Court for the District of Delmas under case number 26/2006 by agreement between the third defendant and the second defendant for the return of the motor vehicle to the third defendant in fraudem legis; and**

**45.3 colluded with each other to perpetrate a fraud on van den Heever and the plaintiff.**

**46. As a result of the fraudulent conduct of the second, third, fourth, fifth and sixth defendants the plaintiff has suffered damages in the sum of R192 121.94 comprising:**

**46.1 R141 000.00 being the monies paid by the plaintiff to the first defendant, and**

**46.2 R51 121,94 being the plaintiff's loss of profit in the sale of the motor**

**vehicle to van den Heever, which profit was reasonable and foreseeable by the parties in this circumstances of this matter.**

**WHEREFORE the plaintiff claims from the second, third, fourth, fifth and sixth defendants, jointly and severally, the one paying the other to be absolved:**

- [a] Payment of the sum of R141 000.00;**
- [b] Interest on the sum of R141 000.00 at the rate of 15.5 % a tempore morae until date of payment;**
- [c] Payment of the sum of R51 121.94;**
- [d] Interest on the sum of R51 121.94 at the rate of 15.5 % a tempore morae until date of payment;**
- [e] Costs of suit,;**
- [f] Further and/or alternative relief. "**

[9] Williams Hunt was represented in this court by Mr. van Rhyn and Van Copenhagen was represented initially by Mr. Wesley and thereafter by Mr. de Klerk. Noormohammed was not represented at the trial. The second to the sixth defendants were initially represented by attorney Omar, then by Adv. Boonzaaier and ultimately by Adv. Bhamjee. Mr. Boonzaaier and Mr. Bhamjee were briefed by Mr. Omar.

[10] When the trial commenced, Noormohammed was present in court and he indicated that he was unrepresented and he outlined his financial difficulties and indicated that he in all probability would not be able to accumulate enough funds in the near future to pay to an attorney to represent him and he asked for a postponement of the case. The postponement was opposed by Mr. Van Rhyn, Mr. Wesley and Mr. Omar. Mr. Omar especially criticised Noormohammed and posed the question as to what steps Noormohammed had taken since 2006 to finance the case and argued that Noormohammed was negligent and he referred to section 34 of the Constitution and argued that his clients had a right to proceed with the case. The court enquired from Mr. Noormohammed how much he had paid up to date to his attorney and Mr. Noormohammed could not come up with any figure. The application by Noormohammed for a postponement was refused by the court. The

court then explained to Noormohammed that he could defend himself by cross-examining witnesses and by putting his version to the plaintiffs' and other witnesses and by arguing himself. He declined and elected to leave the court room.

[11] Thereafter Mr. van Rhyn on behalf of Williams Hunt applied for judgment by default against Noormohammed and the following order was made in favour of Williams Hunt against Noormohammed:

**"28th October 2008:**

**Judgment is granted in favour of the first plaintiff against 1st defendant as follows:**

- 1. Payment of R170 000,00.**
- 2. Payment of interest at the rate of 15,5% per annum on R170 000,00 from the 23rd November 2005 until date of payment of the R170 000,00.**
- 3. Costs of suit."**

[12] Mr. Wesley, on behalf of van Coppenhagen, then also applied for default judgment against Noormohammed and the following judgment was granted against Noormohammed in favour of van Coppenhagen.

**"28th October 2008**

**Judgment is granted in favour of the second plaintiff against 1st defendant as follows:**

- 1. Payment of R192 121,94.**
- 2. Payment of interest at the rate of 15,5% per annum on R170 000,00 from the 1st March 2006 until date of payment of the R192 121,94.**
- 3. Costs of suit."**

[13] Mr. Omar thereupon applied for a costs order relating to the third party proceedings and the following order was made in that regard:

**"28th October 2008**



**Judgment is granted for costs regarding the third party proceedings in favour of the 2nd defendant against the 1st defendant and the third party proceedings is dismissed."**

[14] The first witness for Williams Hunt, the first plaintiff, was one David James Tarry-Smith ("Smith"). He testified that he was employed as a sales person by Williams Hunt. He stated that Williams Hunt did purchase second hand cars from members of the public. In such an event he would require the necessary documentation to prove that the member of the public was the owner of the vehicle and could legally sell the vehicle.

[15] He testified that in this instance he received a call from Noormohammed, in 2005, who informed him that he was a dealer principal and that he was interested in selling his own private vehicle. Smith informed him that he would have to speak first to his dealer principal, one Bruinette, and the used car supervisor, one Solomon. The matter was discussed between the three of them and Smith telephoned Noormohammed and advised him that their offer for the vehicle was R170 000 subject to an appraisal of the vehicle and the papers of the vehicle being in order. The vehicle was brought to them by a gentleman whom they referred to as Doc van der Merwe. An appraisal form was filled in. This document was identified as exhibit "D23".

[16] Smith explained that this was an in-house document and it was not an agreement between the parties. He could not identify the purported signatures of the "seller" on this document.

[17] He further testified that he was presented with the Natis document, being the document generated by the vehicle licensing department indicating who the holder of rights in and to a particular vehicle is. This document indicated Noormohammed as the title holder and owner as from the 18th November 2005 and that Noormohammed was liable for licensing fees as from the 17th November 2005. He referred in this regard and identified exh "D8", it being the relevant Natis document.

[18] He also testified that to make sure, to prevent fraudulent transactions, he communicated with Trans Union HPI, it being an organisation that kept records of all sales of vehicles where vehicles were financed and by filling in the requisite form and sending it to Trans Union HPI. Acting on information he received from Trans Union HPI he communicated with Absa Bank where the vehicle was previously

financed. Absa Bank forwarded to him a letter reading as follows (only the first three unnumbered paragraphs are quoted):

**"CONFIRMATION ACCOUNT PAID IN FULL:**

**ARTICLE::ASTRA**

**ACCOUNT NUMBER:66541644**

**ENGINE NUMBER :Z20LET31021827**

**CHASSIS NUMBER:WOLOTGF074B001489**

**We hereby confirm that, according to our records, this account has been paid in full.**

**This confirmation is given without prejudice to any rights Absa Bank may have, since it is possible that payment made in the recent past by cheque/debit order/bill may be returned to us as unpaid.**

**Please note that ownership of the article still vests in the Bank in the above circumstances until such time as the full amount has been paid to us either in cash or by bank-guaranteed cheque, and that the client has no right whatsoever to sell the article on behalf of the Bank."**

[19] He identified exh "D12" as the Natis document reflecting Williams Hunt as title holder from the 29th November 2005 after they purchased the Opel Astra vehicle from Noormohammed and registered it in their name.

[20] Noormohammed nominated the bank of one Carrim as place where he would receive payment of the purchase price from Williams Hunt and exh "D47", being the bank statement of Williams Hunt, verifies and reflects the transfer of the R170 000,00 on behalf of Noormohammed to Carrim's bank.

[21] Williams Hunt sold the Astra and the purchaser was later dispossessed of it by the Sheriff in terms of an order granted in the magistrate's court of Delmas in favour of HYH against RS Traders and Williams Hunt was out of pocket, as a result thereof, in the amount of R170 000,00.

[22] He was then cross-examined at great length, sometimes in a very argumentative manner, by Mr. Omar. He stated that he got the number of Manhattan Motors from the Auto Trader Magazine and that he was put through to Noormohammed by the switch board when he dialled the number.

[23] He was then asked whether he could dispute that the Astra was sold by Mohammed Ridwaan Joosub to Noormohammed for R230 000,00 and he responded that he could not. It must, at this stage already be pointed out that the 2nd, 3rd, 4th, 5th and 6th defendants did not testify at the trial, but they closed their case and led no evidence. The statement put by Mr. Omar to Smith regarding the alleged sale of the Opel Astra by Mohammed Ridwaan Joosub to Noormohammed had no evidential value.

[24] The witness reiterated that exhibit "D23" was only an internal document and that as Noormohammed had a Natis document in his name, he was the title holder and the owner. He was asked by Mr. Omar, and the purpose of this question remained unclear, in the event of the account with Absa Bank not having been settled whether he would still have caused Williams Hunt to purchase the Astra, the witness replied in the negative. He reiterated that exhibit "D8" reflected Noormohammed as owner and as title holder.

[25] The witness was referred by Mr. Omar to exhibit "D7", which on the 17th November 2005, reflected HYH as owner and title holder. The witness, however, referred to exhibit "D8" which, a day later, namely the 18th November 2005, reflected Noormohammed as the owner and title holder. The witness stated that he was neither presented with exhibit "D7" at the time nor was he aware of its existence. Smith confirmed that he laid a charge with the Police against Noormohammed on the 26th January 2006 after the purchaser of the Opel Astra was dispossessed of the vehicle by the Sheriff. Smith was a straightforward and very credible witness.

[26] The next witness was one Ludwart Conrad van der Merwe. He testified that he was also known as Dok van der Merwe. He made a living out of buying and selling motor vehicles. He was introduced to Noormohammed as the son of the proprietor of Manhattan Motors. Noormohammed informed him that he wanted to dispose of some of his personal vehicles. He first fetched a Polo car to sell from Noormohammed to sell on behalf of Noormohammed and then the Opel Astra, the subject of the first plaintiff's claim. He telephoned several possible buyers, including dealers and also telephoned Smith, the previous witness. Smith, over the telephone, made a tentative offer of R170 000 for the vehicle, subject to confirmation from his superiors in the organisation. He took the Opel Astra to Smith to inspect. He testified that exhibit "D23" could have been filled in in his presence as it contained his residential address although he didn't recognise the handwriting on it. He couldn't identify the signatures on it. Regarding exhibit "D8" he testified that it reflected Noormohammed as the owner and title holder.

[27] He testified that he was acquainted with RS Traders, the second defendant in the case, and he doesn't know HYH, the third defendant, and only saw their name on some of the documents. He testified that on exhibit "D8", Noormohammed was reflected as the owner and the title holder.

[28] He testified that he was also involved in the selling of a Mercedes Benz car on behalf of Noormohammed to Van Copenhagen. This vehicle he fetched from the residence of Noormohammed and he offered it for sale to Van Copenhagen, the second plaintiff, who eventually purchased the vehicle.

[29] Van Copenhagen was very careful and he insisted to be furnished with documents to the effect that the Mercedes Benz was fully paid up. The witness stated that he saw on the documents of the car, which Noormohammed handed to him, that HYH, the third defendant, had sold the Mercedes Benz to Mohammed Ridwaan Joosub.

[30] He testified that he later learned that both the Opel Astra and the Mercedes Benz vehicles were attached by the Sheriff.

[31] He stated that there were other vehicles also attached by a Sheriff and in this regard he referred to inter alia a Polo, a BMW X5 vehicle and a Volkswagen Classic vehicle. He stated that he could not remember whether HYH was also involved in the Polo, BMW X5 and Volkswagen Classic vehicles.

[32] He stated that he became acquainted with RS Traders as he went to fetch some documents relating to the sales of the vehicles there. There he got to know Mohammed Ridwaan Joosub, the fourth defendant.

[33] He stated, under equally aggressive cross-examination from Mr. Omar, that he had nothing to do with the sale of the Polo, the BMW X5 and the other vehicles on behalf of Noormohammed.

[34] He stated that the names of HYH and RS Traders appeared on the court document when the vehicles were attached by the Sheriff.

[35] He denied that he involved himself in the sale of the motor vehicles on behalf of Manhattan Motors and he testified that Noormohammed had in fact told him that these were his private vehicles. He testified that the father of Noormohammed was the owner of Manhattan Motors.

[36] He denied that he and Noormohammed participated in a fraudulent scheme regarding the vehicles.

[37] Van der Merwe was an honest and credible witness.

[38] The next witness was the second plaintiff, Hendrik Lindenberg van Copenhagen. He testified that he was a dealer in motor cars and that he bought the Mercedes Benz car from Noormohammed, who in turn bought it from RS Traders, who in turn bought it from HYH. He stated that the Sheriff removed the Mercedes Benz vehicle in terms of a court order obtained by HYH against RS Traders in the Delmas magistrate's court.

[39] He testified that he was contacted about the Mercedes Benz and Dok van Merwe brought the vehicle to him, that he insisted on proof that the vehicle was paid in full, that upon advice of Dok van der Merwe he telephoned Mohammed Ridwaan Joosub, the fourth defendant, who confirmed to him that Noormohammed had purchased the Mercedes Benz from RS Traders CC, and that Noormohammed had paid the full purchase price to RS Traders, that RS Traders purchased the Mercedes Benz from HYH and that RS Traders have paid the full purchase price of the vehicle to HYH. He invited the witness to telephone a certain Hassim of HYH to confirm with him whether the full purchase price has been paid. He did telephone Hassim, the fifth defendant, who verified to him that RS Traders have paid the full purchase price to HYH. Hassim sent to him written confirmation, a copy of which document was attached to the founding affidavit as annexure "HLVC1" and which was on a letterhead of HYH and which document reads as follows:

**"To Whom It May Concern:**

**This is to confirm that the 2001 Mercedes Benz C240 a/t elegance (reg no. DBD 122 MP) sold to R.S. Traders has been paid in full. Should you have any further queries please contact us.**

**Thank you**

**Sgd. Y Hassim"**

[40] He testified that when the party he sold the vehicle to was dispossessed by the Sheriff on the application of HYH he was very annoyed. He noticed from the Delmas court's papers that whereas HYH was trading in Standerton and the respondent in that

application, RS Traders, were trading in Pretoria, the order was obtained from the magistrate at Delmas at the behest of attorney Zehir Omar, an attorney practising in Springs, who is also the attorney of record of the second, third, fourth, fifth and sixth defendants in casu, and who also appeared for them as their legal representative in this court.

[41] He stated that he launched an urgent application for the return of the motor vehicle in the High Court under case no. 4496/06 against Noormohammed as first respondent, RS Traders as second respondent and HYH as third respondent. The papers of this application was made exhibit "H" in the present case. The witness read paragraphs 7, 8 and 9 of the founding affidavit into the record. The paragraphs read as follows:

- "7. During November 2005 I bought the motor vehicle from the first respondent for the sum of R141 000,00, which amount I paid in full to the first respondent. This sale was arranged by a certain Mr. Dok van der Merwe who acted as the first respondent's agent. When I purchased the motor vehicle from the first respondent I pertinently asked him whether or not he was the owner thereof. The first respondent stated that he was the owner of the motor vehicle and that he had purchased it from the second respondent. He said that he had paid the purchase price in full to the second respondent . He invited me to contact the second respondent to confirm this fact.**
- 8. I then telephoned a certain Mr. Mohammed Ridwaan Joosub (Joosab) (I am uncertain of the spelling of his name) of the second respondent. He told me that the first respondent had purchased the motor vehicle from the second respondent; that the second respondent had in turn purchased the motor vehicle from the third respondent and that the second respondent had paid the purchase price to the third respondent. Mr. Joosub also invited me to contact a certain Mr. Hassim of the third respondent in order to verify what he had told me.**
- 9. Resultant from the above I telephoned Mr. Hassim of the third respondent about the motor vehicle. He told me that the second respondent had purchased the motor vehicle from the third respondent and that the second respondent had paid the purchase price to the third respondent. He also sent me written confirmation**

**that the second respondent had paid the third respondent in full for the motor vehicle. I attach hereto as annexure "HLVC1" a true copy of the aforesaid written confirmation.**

[42] Annexure "HLVC1", referred to in paragraph 9 of the affidavit quoted in the foregoing paragraph, is a letter typed on the letterhead of HYH, with its address at Standerton and the document itself reads as follows:

**"To Whom It May Concern:**

**This is to confirm that the 2001 Mercedes Benz C240 a/t elegance (reg no. DBD 122 MP) sold to R.S. Traders has been paid in full. Should you have any further queries please contact us.**

**Thank you**

**Sgd. Y Hassim"**

[43] Answering papers were filed in matter 4496/06 deposed to respectively by Mohammed Ridwaan Joosub (the fourth respondent in the present matter) on behalf of RS Traders and Shoayb Joosub (the sixth respondent in the present matter) on behalf of HYH. In his affidavit Shoayb Jusab/Joosub response to Van Copenhagen's averments was a bare denial. The attorney acting for the respondents in matter 4496/06 was, once again, Mr. Zehir Omar. In the introductory portion of Shoayb Yusab's affidavit, the same legal arguments put to the plaintiffs' witnesses by Mr. Omar in this court, were once again referred to and detailed at length.

[44] A consent order was made in the application between Van Copenhagen and the respondents in matter 4496/06 in terms whereof the car was to be stored pending resolution of the action with the costs reserved.

[45] Van Copenhagen also testified that Noormohammed handed to him a printed report from Trans Union HPI being a firm keeping records of cars subject to any outstanding hire-purchase agreements and this report confirmed that the vehicle was not subject to any outstanding hire-purchase agreements. He further testified that on the 13th January 2006 he sold the Mercedes Benz car to one Van den Heever. On the 26th January 2006 the sheriff of the Court turned up and attached the Mercedes Benz and handed the car to HYH. Van Copenhagen then approached his attorney who established that an order was issued out of the magistrate's Court at Delmas on the

20th January 2006 under case no. 26/06, to HYH against RS Traders on the basis of the rei vindicatio.

[46] Van Copenhagen related that he had to refund Absa Bank after the Mercedes Benz was repossessed and that he suffered the damages as set out in the particulars of claim.

[47] Under lengthy cross-examination of Mr. Omar, he testified that he wanted to join in the application in the Delmas Court but that he received legal advice that he could not.

[48] He reiterated that he telephoned the fifth defendant too, prior to purchasing the Mercedes Benz car, who also confirmed to him that he was paid in full for the car.

[49] Mr. Omar at length cross-examined Van Copenhagen further and argued with him about the latter's knowledge of the legal process of registering a vehicle into one's name. The witness testified that only portion A, D and E of the form MVR1A are filled in by a motor dealer to register the vehicle into his name.

[50] In further cross-examination by Mr. Omar the witness testified that he was not presented with a copy of the cheque for R77 000 drawn by RS Traders in favour of HYH and which was allegedly dishonoured.

[51] In re-examination Van Copenhagen once more and in greater detail set out the steps taken to register a motor vehicle in one's name and he reiterated that he took the requisite steps.

[52] He testified that he and four other motor dealers went and laid a criminal complaint at the Wierda Bridge Police Station about the sales of the vehicles to them.

[53] He testified that he never saw the alleged cheque for R77 000,00 which was allegedly dishonoured as was alleged by HYH.

[54] Van Copenhagen was not shaken at all during the cross-examination by Mr. Omar and he made a very good impression on the Court and the court without hesitation finds him to be a truthfull and credible witness.

[55] The next witness for the plaintiffs was attorney Morris Pokroy, the attorney who previously represented Noormohammed. He testified that he wrote exhibit "I" to RS Traders on the 15th February 2006 at the instructions of Noormohammed. He no



longer represented Noormohammed because Noormohammed did not provide him with the necessary funds. Mr. Pokroy was also a very credible witness.

[56] Noormohammed then testified on behalf of the plaintiffs.

[57] He testified that he was approached by Mohammed Ridwaan Joosub, the fourth defendant, who advised him that he had an Opel Astra vehicle for sale. He stated to Mohammed Ridwaan Joosub that he could assist him in finding a buyer for the car. He went to the premises of RS Traders where Mohammed Ridwaan Joosub was operating from. He bought the vehicle for R230 000 and gave Mohammed Ridwaan Joosub 10 cheques for R23 000 each. He was thereupon given possession of the Opel Astra. The understanding between them was that Noormohammed was going to sell the Opel Astra to another buyer. Mohammed Ridwaan Joosub later expressed unhappiness about the delay in getting payment and implored Noormohammed to sell the vehicle expeditiously. Noormohammed handed the Opel Astra to Dok van der Merwe who in turn approached several dealers in cars. One, Williams Hunt, was interested but only offered R170 000 for the car. Noormohammed contacted Mohammed Ridwaan Joosub who asked some time to consider and Mohammed Ridwaan Joosub reverted back to him saying that the price of R170 000 was acceptable and that he could sell it at that price. He testified that the agreement that he would purchase the car for R230 000 was cancelled between him and RS Traders represented by Mohammed Ridwan Joosub, and was substituted by one in terms whereof he was to sell the vehicle for R170 000,00 and upon payment of that amount to RS Traders he would get a commission on the sale. He telephoned Dok van der Merwe and informed him to see the deal through with Williams Hunt for R170 000,00. The vehicle was handed to Williams Hunt. He received payment of the R170 000 through the bank account of one Carrim and he at his residence paid Mohammed Ridwaan Joosub one evening and he got R10 000 commission. He testified that Mohamed Ridwaan Joosub wanted the money in cash. It was put to him by Mr. Omar that he handed 10 post dated cheques to Mohammed Ridwan Joosub and that the first cheque was dishonoured. These cheques appear on pages 98, 99 and 100 of bundle "D". His response to that was that that deal was cancelled and that he in terms of the new agreement already have paid cash for the car and that he never got the cheques back. He testified that he similarly paid amounts of R150 000 and R80 000 in cash to Mohammed Ridwaan Joosub relating to other transactions. He further testified that he told the lady at Williams Hunt, who handled the financial side of the transaction, that he had permission to sell the vehicle and he gave her the particulars of RS Traders. She left the room and came back later, apparently satisfied.

[58] He testified that Mohammed Ridwaan Joosub also put him in possession of the Mercedes Benz car which he sold to Van Coppenhagen, a Polo car, a BMW X5 vehicle and also a Volkswagen Classic car and these were similarly disposed off by him.

[59] He confirmed having instructed attorney Pokroy to write exhibit "I", and he confirmed the correctness of the contents thereof except for the reference therein to Carrim and his wife in paragraph 8 thereof, and he caused his driver to deliver the letter to Mohammed Ridwaan Joosub. His uncontroverted evidence was that Mohammed Ridwaan Joosub telephoned him after receipt of the said letter about the letter and its contents. The contents of the letter was read into the record and it reads as follows:

**"R & S TRADERS15 February 2006.  
JEAN AVENUE  
CENTURION**

**Dear Sir,**

**re: OUR CLIENT: MR ZUNAID NOORMAHOMED**

**We act on behalf of our abovementioned client and are instructed to address this letter to you as follows.**

- 1. During the period November and December 2005 you requested our client to find purchasers for the following motor vehicles:**
  - 1.1 Opel Astra Turbo – to be sold for the sum of R170 000.00;**
  - 1.2 C240 Automatic Mercedes Benz – to be sold for the sum of R165 000.00;**
  - 1.3 BMW X5 – to be sold for R250 000.00;**
  - 1.4 Chrysler Voyager – to be sold for the sum of R225 000.00;**
  - 1.5 Volkswagen Polo – to be sold for the sum of R99 000.00.**
- 2. You represented to our client that the abovementioned vehicles were your property and that you were entitled to dispose of the said vehicles.**
- 3. In respect of the Opel Astra motor vehicle you initially advised our client that you wished to sell it for the sum of R230 000,00 and that you were willing to accept ten postdated cheques in payment thereof. Either the**

first or the last cheque in the series would represent our client's commission.

4. Our client duly handed to you ten postdated cheques of R23 000.00 each.
5. Subsequently thereto you agreed to accept the amount of R170 000.00 and the said vehicle was sold by our client's agent on your behalf to Williams Hunt Delta for the said sum.
6. In respect of this vehicle you had also furnished our client with a letter issued by HYH Motors certifying that the said vehicle had been paid for.
7. Our client received the registration papers and transfer form pertaining to the said motor vehicle from you. These documents were in turn delivered to William Hunt Delta.
8. The said purchase price of R170 000.00 was in fact paid to you in cash at our client's home in the presence of his wife and brother in law, certain Mr S Carrim.
9. Of the said proceeds of R170 000.00 you paid our client an amount of R10 000.00 in cash being his reduced commission on the said transaction. You also advised our client that you would return the aforementioned series of postdated cheques to him and consequently our client believing in the truth thereof, and particularly in view of your long standing relationship with our client, did not stop payment of the said cheques.
10. Notwithstanding the aforementioned agreement and the fact that the purchase price had been paid to you in full, you nevertheless in breach of your undertaking presented the first cheque in the said series of R23 000.00 each for payment and which cheque was honoured. You therefore received an amount R23 000.00 in excess of the said purchase price.
11. The second transaction related to the abovementioned Mercedes Benz motor vehicle which you requested our client to sell for the sum of R170 000.00. In this instance our client delivered to you two postdated cheques of R85 000.00 each dated the 30<sup>th</sup> of November 2005 and 30<sup>th</sup> of January 2006. The said cheques made up the sum of R170 000.00 and which would also include our client's agreed commission of R5 000.00.

12. **Omega Motors were only prepared to pay an amount of R141 000.00 as certain repairs had to be done to the engine of the said vehicle.**
13. **Client's first cheque of R85 000.00 was duly presented for payment by you and paid to you.**
14. **In addition to the said cheque our client also paid you an amount of R80 000.00 in cash at our client's house in the presence of client's wife. You therefore received payment in full of the purchase price for the said Mercedes Benz motor vehicle (less our client's commission) and you were most certainly not entitled to present the second cheque of R85 000.00 for payment. You did in fact present the said cheque for payment but there were no funds in client's account to meet payment thereof.**
15. **In regard to this transaction you also furnished our client with the registration papers and transfer of ownership form and a letter from HYH Motors confirming that the said vehicle had been paid in full and thereby entitling our client to dispose of the said vehicle on your behalf.**
16. **The third transaction related to BMW X5 motor vehicle which you required our client to sell for an amount of R260 000.00. Our client handed to you four cheques of R65 000.00 each to make up the said purchase price and you delivered the said vehicle to our client together with the registration papers and transfer of ownership form.**
17. **Our client's agent sold the said vehicle for the sum of R269 000.00. On account of this transaction client's said agent received a cheque of R180 000.00 leaving a balance of R80 000.00 which balance, our client was assured by his said agent, would be paid within a month or two thereafter. A dispute has arisen between our client and his said agent, the latter denying that the vehicle was in fact sold for an amount in excess of R180 000.00.**
18. **On account of this particular transaction, our client handed to you the sum of R150 000.00 in cash at his home in the presence of his wife. You also had presented the first cheque of R65 000.00 which was paid. In effect therefore you had received an account of this transaction the sum of R215 000.00. You informed our client that because he had found a purchaser so quickly, you were prepared to accept an amount of R250 000.00 for the said vehicle, thus leaving an outstanding balance of R35**

**000.00 owing to you.**

- 19. It was during the course of this transaction that you informed our client that you would return the original postdated cheques of R23 000.00 each to our client, notwithstanding the fact that you had already presented the first cheque for payment thereof as abovementioned.**
- 20. With regard to his transaction our client also received from you the registration papers and transfer of ownership form.**
- 21. The fourth transaction related to the sale of a Chrysler Voyager motor vehicle. You required a purchase price of R225 000.00 for this vehicle. Client furnished you with a cheque payable immediately for the sum of R113 000.00 together with a cheque to the value of R112 000.00 postdated to the 30<sup>th</sup> of January 2006.**
- 22. You did not deliver any registration papers of transfer of ownership to our client for the said motor vehicle.**
- 23. Our client's duly authorised agent sold the vehicle to Centurion Select for the sum of R250 000.00. On account of the purchase price our client received a cheque for R171 000.00 and was assured by client's agent that the balance of R79 000.00 would be paid before the end of January 2006. In regard to payment of the said balance, a dispute has also arisen.**
- 24. Client's then currently dated cheque in the sum of R113 000.00 was duly presented by you for payment and was honoured by client's bank. Notwithstanding the aforesaid payment you have refused to furnish our client with the registration papers and transfer of ownership form relating to the said motor vehicle.**
- 25. The balance owing to you in respect of the said vehicle amounts to R112 000.00. Client's second cheque in the sum of R112 000.00 was not presented for payment by you.**
- 26. The fifth transaction related to certain Volkswagen Polo motor vehicle which our client agreed to sell on your behalf for the sum of R99 000.00.**
- 27. Client's duly authorised agent sold the said motor vehicle for the said sum of R99 000.00.**

28. The purchaser namely Corporate Motors gave our client's said agent a cheque for the sum of R83 000.00. which our client's said agent deposited into his own account.
29. Our client paid you an amount of R50 000.00 on account of this transaction leaving a balance of R49 000.00.
30. A dispute has arisen between our client and his said agent as aforesated and as a result thereof our client has not received any payment from the said agent regarding this transaction.
31. In the premises therefore it appears that our client is still indebted to you as follows:
  - 31.1 The sum of R35 000.00 in respect of the BMW X5;
  - 31.2 The sum of R112 000.00 in respect of the Chrysler Voyager (provided you can deliver to our client the registration papers and change of ownership form to enable the ultimate purchaser of the said vehicle to have to vehicle registered in its name); and
  - 31.3 The sum of R49 000.00 in respect of the Volkswagen Polo motor vehicle.
32. The total amount which is indebted to you is R196 000.00.
33. On/or about the 1<sup>st</sup> of November 2005 our client sold and delivered to you a certain BMW 530 D motor vehicle for the sum of R240 000.00. On account of the said purchase price you paid to our client the sum of R150 000.00 leaving a balance outstanding in the sum of R90 000.00.
34. Our client is therefore entitled to a credit of R90 000.00 which would then reduce the balance owing to you by our client to R106 000.00.
35. We reiterate our instructions that at all times material relating to the purchase of and sale of the abovementioned motor vehicles you represented to our client that the said vehicles had been fully paid for and that you were entitle to dispose of the said vehicles. Believing in the truth of such representations, our client agreed to enter into the abovementioned transactions with you.
36. The said representation made by you were to your knowledge false as our

client has ascertained that HYH Motors from whom you obtained the said vehicles have alleged that the vehicles have not been paid for and the said motor dealer has in fact taken action to repossess the abovementioned vehicles from the possession of those parties who purchased the vehicles from our client.

37. Our client invites you to attend a round table conference with a view to finding an amicable solution to the current state of affairs and should you refuse to attend such meeting our client will take action against you as he may be advised to do.
38. The writer also contacted your Mr. Ridwaan Joosub on his cell phone on Friday the 27<sup>th</sup> of January 2006. Your Mr Ridwaan Joosub was hesitant to speak to the writer and first denied that he was Ridwaan and stated that he was Mohammed whom the writer was speaking to. The writer furnished you with his full names and telephone number and requested your Mr Ridwaan Joosub to contact the writer to discuss these transactions. To date hereof the writer has received no response whatsoever to the said call.
39. Clearly no further monies can be paid to you due to the fact that the vehicles are being repossessed of the instance of HYH Motors and as a result thereof our client is now being exposed to actions for damages by the various dealers who purchased the vehicles from our client.
40. Our instructions are that you were fully aware of the fact that the vehicles other than those for which letters had been issued by HYH Motors had not been paid for in full and you therefore misled our client into entering into these transactions with you and consequently our client reserves his right to institute action against you for such damages as he may suffer as a result of the foregoing.
41. The appropriate action will also be taken to have all these transactions dealt with by you fully investigated by the relevant authorities, with the appropriate consequences to follow.
42. Our instructions are further that in all the transactions entered into between yourself and our client no VAT and/or TAX invoices and /or other documents evidencing the above transactions were ever issued by you. We have received a copy of an invoice from the attorney acting for

**Omega Motors which purports to be an invoice issued by yourselves dated the 11<sup>th</sup> of November 2005 evidencing the sale of the said Mercedes Benz motor vehicle. Our client denies the authenticity of the said document for various reasons which will no doubt be ventilated in Court at the proper forum and will also no doubt be investigated by the appropriate authorities. For this reason we do not propose dealing with the various aspects of your said invoice other than to say that the said document was never issued to our client.**

**Yours faithfully**

**MORRIS POKROY**

**per:"**

[60] He was subjected to strenuous, argumentative and dragged out cross-examination by Mr. Omar.

[61] Noormohammed testified that it was difficult, if not impossible to sell cars without it being registered into his name as full owner thereof and he discussed this with Mohammed Ridwan Joosub and the latter instructed him to do what may be necessary including registering the vehicles into his own name as full owner thereof and he subsequently signed the official documents causing the vehicles to be registered into his name as full owner thereof. He was questioned by Mr. Omar as to whether he got permission from HYH to transfer the vehicles into his name and he responded that at that stage he was unaware of the existence of HYH.

[62] Noormohammed pointed out that the reference in paragraph 8 of exhibit "I" was not correct where it referred to the payment being made in the presence of his wife and his brother in law Carrim. Noormohammed was a very good, truthfull and credible witness.

[63] The next witness was Noormohammed's common law wife. She testified that she saw Noormohammed with the money he testified, and which money was referred to in paragraph 8 of exhibit "I", he paid to Mohammed Ridwaan Joosub, she testified about a telephone call setting up a meeting between her husband and Mohammed Ridwaan Joosub, she spoke over the telephone to Mohammed Ridwaan Joosub before and knew his voice, she heard somebody arrive at their dwelling, she saw Noormohammed going out of the house with the money, she heard him talking to somebody, and he came back into the house without the money. She thus in a way



supported Noormohammed's evidence that he paid Mohammed Ridwaan Joosub. She was an equally truthful and credible witness.

[64] After the case of the plaintiffs was closed Mr. Omar applied for absolution from the instance. The application was opposed and when the court resumed to hear the plaintiffs' argument Mr. Omar's was absent and Adv. Boonzaaier was present and indicated that he was standing in for Mr. Omar, whatever that may mean. Mr. Boonzaaier asked to be relieved and excused. The court asked him about his instructions regarding the absolution application and he replied that he had no instructions at all. As far as the court could gather Mr. Omar was busy with another case in another court. He did not beforehand inform this court thereof and he did not seek the permission from this court to absent himself from this court.

[65] After Mr. Boonzaaier had left, there being no appearance for any of the defendants, their names were called out in the passage whereupon Mohammed Ridwaan Joosub entered the court and informed the court that Mr. Omar would be back in court after tea. The tea adjournment was then taken. After the adjournment Mr. Omar was back in court and he handed up written heads of argument regarding the application for absolution. Judgment on the absolution application was thereafter reserved. The application for absolution was thereafter dismissed with costs reserved. When the court resumed and the case of the defendants was to be presented Mr. Omar was absent and Mr. Bhamjee announced that he further appeared for the second, third, fourth, fifth and sixth defendants.

[66] Mr. Bhamjee then applied for a postponement of the case due to the absence of Mr. Omar. He informed the court that Mr. Omar was involved in a matter in the Supreme Court of Appeal which, so went his argument, was a higher court than this court and that dates were not easily come by in the Supreme Court of Appeal. He further argued that Mr. Omar was not absent wilfully. He also stated that Mr. Omar was not only the counsel of his clients but also their attorney and that it was not unreasonable to expect an application for a postponement on the sixth day of a trial as in this case. He also argued that his clients have a right to have themselves represented by counsel of their own choice and that the defendants would suffer if they do not have Mr. Omar as their counsel. He also argued that the plaintiffs have closed their case and they would suffer no prejudice. The plaintiffs opposed the application for a postponement. Mr. van Rhyn argued that the estimation of the duration of the trial was 4-5 days but that the matter was set down indefinitely as it is a running roll. He argued that counsel should get rid of new cases and finish the case he is busy with and that Mr. Omar's absence did not protect his clients. There, furthermore, according to him, was no request to the plaintiffs or the court that the

matter stands down in order to give Mr. Omar the opportunity to attend at the Supreme Court of Appeal and that the matter resumes then again. He also made three submissions:

- a) Mr. Omar already indicated that if the application for absolution fails he would close his clients' case;
- b) Mr. Omar was on the fifth day of the trial, namely Monday the 3rd November 2008 also engaged in another case and sent Adv. Boonzaaier, without any instructions to this court. Now on the sixth day he was simply absent and was engaged in the Supreme Court of Appeal.
- c) Mr. Omar did not put any version of any of the defendants to the plaintiffs and their witnesses, save that he put to Noormohammed that Mohammed Ridwaan Joosub denied that he was paid the R170 000. He failed to see how Mr. Omar could call witnesses giving versions in their evidence which were not put to the plaintiffs and their witnesses.

[67] Mr. van Rhyn also argued the traditional points to be considered by a court when there was an application for a postponement and he submitted:

- a) the trial judge has a discretion;
- b) a court of appeal is not entitled to reverse the lower court's exercising of its discretion;
- c) a court of appeal may, however, reverse such a decision on good grounds shown;
- d) a court would be slow to refuse a postponement where the unreadiness of a party is properly and fully explained.
- e) no explanation was furnished why the court was not requested to stand the matter down. Nothing was put before this court as to how long the matter in the Supreme Court of Appeal would last, who the parties were and what was so special about that case that compelled Mr. Omar to be in Bloemfontein rather than in the High Court in Pretoria;
- f) there was no explanation why the plaintiffs were only alerted on Friday, the 4th day of the trial, that Mr. Omar may be away;

- g) the application must be bona fide - the application for a postponement was not bona fide and the matter could have proceeded with despite Mr. Omar's absence;
- h) the plaintiffs cannot be fairly compensated by a mere costs order, costs were in any case not offered, and that there was vast potential of irreparable harm due to the time delay to get new trial dates, perhaps only after the expiry of another year;
- i) it was clear from the manner in which the defendants' case was conducted that it was unlikely that the defendants would call any witnesses and that the application for a postponement was a mere ploy to delay the matter;
- j) the court should weigh the prejudice suffered by the plaintiffs and the defendants - on the plaintiffs' side they were entitled to have the matter finalised, on defendants' side they have nothing to lose, they will not call witnesses and the matter would be delayed unnecessarily;
- k) there was nothing before the court indicating that the dictates of justice required that the matter be postponed.

[68] Mr. de Klerk, for the plaintiff Van Copenhagen, submitted that the application for a postponement was not bona fide and was a mere delaying tactic. He argued that Mr. Omar had full knowledge of the case in the Supreme Court of Appeal for at least several months beforehand yet he didn't say a word about it at the pre-trial meeting, in fact the first word he heard about Mr. Omar not being available was the previous week's Friday it being the 31st October 2008. He also pointed out that of the defendants only Mohammed Ridwaan Joosub was present and he posed the question what the purpose of the postponement was if the other defendants were not even present at court to listen to the evidence of the plaintiffs and their witnesses. He reiterated that his client had gone through troubled waters since the 20th February 2006 when the purchaser of the Mercedes Benz car was dispossessed by the Sheriff due to the order obtained in the Delmas Court by Mr. Omar on behalf of HYH. He referred to a second urgent application which was necessitated because, contrary to the previous High Court order, the Mercedes Benz was not kept in storage but was used on the open road. The costs of that application was reserved and in the mean time his client had to foot the bill regarding his own legal costs. He also pointed out that he had to issue civil warrants of arrest against Yaseen Hassim, the fifth defendant, and his wife because they evaded the Sheriff at Standerton and then falsely stated that they have paid the fine imposed for contempt of court namely R30

000. It showed, so went his argument, that there was scant respect for the law amongst the defendants. He also pointed out that, despite the High Court order ordering the Mercedes Benz to be kept in safe custody, that Mohammed Ridwaan Joosub, who knew about the two court orders, in an underhand manner, later had sold the same Mercedes Benz car to one B.J. Mahlangu. He also pointed out that the vehicle was depreciating daily and that the matter had been going on for 22 months already and that his client required and was entitled to finality. He also referred to the "cheek" of the defendants to, under the prevailing circumstances and in the light of the history of the matter, to ask for a further postponement thereof.

[69] Mr. Bhamjee in reply reiterated that the defendants were not to be blamed for the postponement and he argued that the application should be granted and that costs be reserved.

[70] The court, after considering the matter refused the application for a postponement and made the order which is fully set out hereunder.

[71] The reasons for dismissing the application for postponement were basically those Mr. van Rhyn and Mr. de Klerk have pointed out, namely that a good case for a postponement was not made out and that the application, on the face of it, was not bona fide and that the mere absence of Mr. Omar, who knew for a long time beforehand that he would not be available, in itself, was not sufficient cause meriting a postponement prejudicing the plaintiffs unnecessarily. The court also took into consideration that it was not an application for the matter to stand down, it was an out and out application for a postponement and that no costs were even tendered. It must be noted here that soon after the case started this court got the impression that Mr. Omar was unnecessarily dragging out his cross-examination of the plaintiffs and their witnesses.

[72] Mr. Bhamjee, without calling any witnesses, although Mr. Mohammed Ridwaan Joosub was available in court, closed the case of the second, third, fourth, fifth and sixth defendants and the parties started arguing the merits of the matter.

[73] At some stage during the argument, after an adjournment, Mr. Bhamjee indicated that he had spoken per telephone to Mr. Omar who instructed him to apply for the case of his clients to be reopened. The court then enquired from Mr. Bhamjee to address the court and thereafter the court indicated to Mr. Bhamjee that his submissions were rather scant and that a substantive application was called for for reopening of the defendants' case. Mr. Bhamjee did not apply for a postponement to bring a substantive application and the application as it stood was dismissed and the

merits of the matter was argued further by Mr. van Rhyn for Williams Hunt, Mr. de Klerk for Van Coppenhagen and Mr. Bhamjee for the defendants and judgment was reserved.

[74] When considering the evidence the court deemed it necessary to call for further argument and a directive was issued wherein Van Coppenhagen's attorneys were instructed to cause copies thereof to be served on the defendants as their attorney, Mr. Omar, had in the meantime withdrawn as their attorney. The directive reads as follows:

**"Messrs. Andre de Klerk Attorneys  
Fax 012x365 2509  
Pretoria**

**Dear Sirs,**

**Re: CIVIL CASE 10558/06 : VAN COPPENHAGEN v  
NOORMOHAMMED AND FIVE OTHER.**

**His Lordship, Mr. Acting Justice Ebersohn, directed as follows:**

**"Seeing that the plaintiff Van Coppenhagen obtained judgment by default against the first defendant on a verbal agreement and that the court have not yet made a ruling regarding the unassailability, or not, of the third defendant's claim to the Mercedes Benz motor vehicle, the Court requires the plaintiff Van Coppenhagen and the second, third, fourth, fifth and sixth defendants to file written heads of argument regarding the entertainability, or not, of Van Coppenhagen's claim against the second, third, fourth, fifth and sixth defendants.**

- 1. The said heads of argument must be filed on or before 12:00 on the 1<sup>st</sup> December 2008 with the secretary of Mr. Acting Justice Ebersohn at Room 2.12, High Court Building, Pretoria.**
- 2. As the attorney acting for the second, third, fourth, fifth and sixth defendants have withdrawn as their attorney of record, the attorneys of the plaintiff Van Coppenhagen, are directed to cause the Sheriff to serve a copy of this directive on the second, third, fourth, fifth and sixth defendants.**

**Yours faithfully**

**REGISTRAR OF THE HIGH COURT"**

[75] In his notice of withdrawal as attorney for the defendants dated the 6th November 2008, Mr. Zehir Omar gave the last known address of the 2nd, 4th and 6th defendants as 285 Urban Street, Erasmia, Pretoria and the last known address of the 3rd and 5th defendants as 41 Vry Street, Standerton.

[76] The attorneys of Van Coppenhagen duly instructed the Sheriff to serve copies of the directive on the defendants at the addresses supplied by Mr. Omar. Service was effected on the third and fifth defendants at 41 Vry Street, Standerton on the 20th November 2008. The directive was also served on the 24th November 2008 at the Sasol Garage on RS Traders, and Mohammed Ridwan Joosub and Shoayb Joosub. The Sheriff also made returns to the effect that Shoayb Joosub and Mohamed Ridwan Joosub were unknown at the address "285 Urban Street, Erasmia, Pretoria", being the address furnished by Mr. Omar.

[77] The legal representatives of the plaintiff, Van Coppenhagen, duly filed comprehensive heads of argument and none was received from any or on behalf of any of the defendants.

[78] In their heads of argument Van Coppenhagen's legal representatives argued that Van Coppenhagen's claim was against the first defendant for breach of implied warranty against eviction and that his claim against the other defendants was based on fraud.

[79] This court is faced with many peculiarities regarding the 2nd to the 6th defendants and their attorney Mr. Zehir Omar:

- a) The attorney involved on behalf of HYH in the application in the Magistrate's Court at Delmas was Mr. Zehir Omar;
- b) The application to repossess the Opel Astra and Mercedes Benz cars was brought in the Delmas Magistrate's Court, yet the applicant HYH was from Standerton and RS Traders, the respondent in that application, was from Pretoria, and attorney Zehir Omar's office was in Springs and the vehicle happened to be in Pretoria. In paragraph 8 of the annexure to the summons it is

alleged that the "**Defendant consented to the jurisdiction of this Honourable Court**" but no consent was attached to the summons. As will appear clearly in this judgment the repossession application in the Delmas Magistrate's Court was a ploy to dispossess the bona fide purchasers of the vehicles, the ploy being concocted between the 2nd to the 6th defendants with the main role players apparently being two brothers namely Mohammed Ridwaan Joosub, the fourth defendant, and Shoayb Jusab, the 6th defendant.

- c) Apparently, in view of the "friendliness" between the brother applicant and brother respondent, the summons and the application to repossess the Opel Astra and Mercedes Benz cars were not even served. There was accordingly no return of service in the file of the magistrate of Delmas.
- d) The supporting affidavit was deposed to by Shoayb Joosub, the sixth respondent in the present matter, who gave his address as 343 Clove Street, Laudium, Pretoria.
- e) Attached to the affidavit of Shoayb Joosub there was an invoice, marked "HY1" issued by HYH on the 10th November 2005 against RS Traders regarding the Mercedes Benz car reflecting that the car was sold to RS Traders for R154 000,00 payable by way of 2 cheques of R77 000,00 each, dated respectively the 30th November 2005 and the 31st December 2005. At the bottom of the invoice appears the following: **"WE RESERVE THE RIGHT OF OWNERSHIP UNTIL THE VEHICLE IS PAID IN FULL."**
- f) Attached to the affidavit of Shoayb Joosub there was another invoice, marked "HY2" issued by HYH on the 14th November 2005 against Mr. M.R. Joosab, No. 1 Gean Avenue, Centurion, as purchaser of the Opel Astra car for R210 000,00. This is the same car which was later sold to Williams Hunt. There appears the following regarding the purchase price **"PAID BY 10 CHEQUES OF R21 000 EACH."** At the bottom of the invoice also appears the following: **"WE RESERVE THE RIGHT OF OWNERSHIP UNTIL THE VEHICLE IS PAID IN FULL."**
- g) Shoayb Joosub, the sixth respondent in the present action, and also being the deponent to the founding affidavit in Delmas matter 26/06, apparently committed perjury in Delmas matter 26/06 when deposing to the supporting affidavit in so far as the Opel Astra was not sold by HYH to RS Traders but in fact was sold according to the invoice to his brother Mohammed Ridwaan Joosub, the fourth defendant in the present matter.

- h) On the 23rd January 2006 HYH and RS Traders, being respectively represented by the two brothers Shoayb Joosab and Mohammed Ridwaan Joosub, signed an agreement, annexure "HLVC6" to exhibit "H", in terms whereof they settled the matter regarding the Mercedes Benz car and purported to settle the issue of the Opel Astra car but with regard to this car it was abortive as HYH didn't sell the Opel Astra to RS Traders, but in fact sold it to Mohammed Ridwaan Joosub, the fourth defendant in the present matter before me. It must be noted that Mohammed Ridwaan Joosub was not cited as a party to the proceedings in the Delmas court and he signed the settlement agreement on behalf of RS Traders.
- i) The proceedings whereby the Opel Astra was repossessed therefore was a nullity. It is a pity that the magistrate of Delmas, before issuing the order regarding the Opel Astra, apparently didn't read the papers properly in this regard.
- j) Attorney Zehir Omar who acted as attorney for HYH against RS Traders either deliberately withheld from the Magistrate of Delmas that no repossession of the Opel Astra could be granted or was grossly negligent in preparing the court papers and obtaining the repossession order regarding the Opel Astra without joining the purchaser of the Opel Astra, Mohammed Ridwaan Joosub, in the action.
- k) The evidence was that three more motor vehicles were given by Mohammed Ridwaan Joosub to Noormohammed to sell to wit a Polo, a BMW X5 and a Volkswagen Classic.
- l) From exhibit "H" it appears that on the 27th January 2006 Balfour Tyre Centre issued a summons against RS Traders under case no. 292/06 in the Brakpan Magistrate's Court, with Balfour Tyre Centre being trading in Balfour, against RS Traders, whose address was stated as 1 Jean Avenue, Centurion, for the return to it of the BMW X5 vehicle and the Polo vehicle based on the rei vindicatio and also obtained a court order to repossess the said two vehicles.
- m) According to a Tax invoice, numbered 786, attached to the papers the BMW was sold for R240 000 to RS Traders, Mohammed Ridwaan Joosub's CC, on the 1st December 2005 and the Polo was sold according to a Tax invoice also numbered 786, attached to the papers for R97 500,00 on the 27th December 2005 also to Mohammed Ridwaan Joosub's CC. Neither of the two invoices



indicate when the purchase price was payable. Both invoices contain the following paragraph at the bottom thereof: **"RIGHT OF OWNERSHIP IS RESERVED BY BALFOUR TYRE CENTRE UNTIL GOODS ARE PAID IN FULL."**

- n) The plaintiff's attorney in the Brakpan case was once more attorney Zehir Omar.
- o) Once again the deponent to the affidavit made in support of the application to attach the two vehicles, was Shoayb Joosub, the sixth defendant in the present matter.
- p) Exhibit "H" also contains particulars of an urgent application brought under Division) on the 15th February 2006 by Andries Francois Bezuidenhout against RS Traders as first respondent, Dada Motors Potchefstroom (Pty) Ltd. as second respondent and Noormohammed as third respondent in terms whereof the applicant prayed for an order prohibiting the respondents from disposing of a certain Chrysler Voyager vehicle.
- q) The manner in which the case of the second, third, fourth, fifth and sixth defendants was represented by Mr. Zehir Omar struck this court as being peculiar. Except for putting to him that his payment of the R170 000,00 to Mohammed Ridwaan Joosub regarding the payment of the R170 000 to him by Noormohammed was denied, the versions of the defendants regarding the other facts testified to by the plaintiffs and their witnesses were not put to the witnesses who testified. None of Mr. Omar's clients testified to support their versions in the pleadings and deposed to in the Delmas Magistrate's Court. It would have been easy for them to produce in evidence the documents relied upon for the reservation of ownership by HYH if it in fact existed and were genuine. Instead of putting the versions of his clients to the plaintiffs and their witnesses Mr. Omar reverted to lengthy arguments in cross-examination of the witnesses regarding the registration process and the legal requirements thereof.
- r) Mr. Omar is a very experienced lawyer. He has been acting for his clients in various matters relating to the specific two vehicles namely the Mercedes Benz and the Opel Astra. Besides that he has been acting for the same clients in the Brakpan Magistrate's Court too. Any lawyer with reasonable intelligence would have picked up that HYH did not sell the Opel Astra to RS Traders but to Mohammed Ridwaan Joosub in his personal capacity.

- s) HYH and its lawyer knew, at the time of bringing the application in the Delmas Court, that RS Traders no longer was in the possession of the Mercedes Benz and Opel Astra cars but that they were resold by Williams Hunt and Van Copenhagen. Paragraph 17 of the application reads as follows:

**"17. The Respondent is a motor dealer and I expect tha Respondent will dispose of the motor vehicles without my consent. If I give the Respondent notice of these proceedings, we (sic) will surely dispose of same."**

The said paragraph was deliberately drawn so as to mislead the magistrate and keep away from him the truth namely that with the consent and knowledge of HYH the vehicles were long ago already disposed off to unsuspecting bona fide purchasers.

- t) HYH and their lawyer knew where to direct the Sheriff to, to attach the respective cars, immediately after the order was granted by the magistrate of Delmas. The fact that no notice of the application to repossess the two vehicles was given to the then bona fide possessors of the two vehicles, who had a legitimate right to be joined in the matter was compounded by the false pretence when approaching the magistrate, that RS Traders was still in possession of the two vehicles.
- u) It would have been interesting to hear the evidence of the defendants regarding the crucial matters in dispute, and the explanations their attorney, Mr. Omar, regarding professional aspects involved in the applications and in this matter.

[80] This court is not bound by the decision of the magistrate of Delmas in the false application which was brought before it. This court in fact, finds that the third defendant's claim to the Opel Astra and Mercedes Benz vehicles was not unassailable on three grounds.

[81] The first ground is that the defendants having failed to adduce any evidence at all, there is no cogent evidence to the effect that the third defendant is the owner of the Opel Astra and the Mercedes Benz cars and of its reservation of the ownership thereof until the full purchase price shall have been paid.

[82] Secondly, this court finds unhesitatingly that the second, third, fourth, fifth and sixth defendants put into operation and perpetrated a massive fraud on various members of the public, including the two plaintiffs, by disposing to them of motor

vehicles and then to purport that the third defendant was the owner of the vehicles and that they were purchased from it by the second defendant, with a reservation of ownership until the full purchase price of the vehicles shall have been paid, and then disposing them to unsuspecting members of the public and then dispossessing the unsuspecting members of the public by way of court orders obtained under false pretences and by putting false information before the magistrate, behind the backs of the subsequent unsuspecting bona fide purchasers thereof.

[83] The third ground is based on estoppel. See in this regard **Concor Holdings (Pty) Ltd. t/a Concor Technicrete v Potgieter** 2004(6) SA 491(SCA). The second, third, fourth, fifth and sixth defendants are bound by their representations constituted by conduct and they as representors ought reasonably to have expected that the representee might be misled by their conduct and the said representees have acted reasonably in construing the representation in the way the representees did. See also **United Cape Fisheries (Pty) Ltd v Silverman** 1951(2) SA 612 (T); **Kia Motors (SA) (Edms) Bpk. v Van Zyl en 'n Ander** 1999 (2) SA 640 (OPA). All the required elements are present in the case as were set out in this judgment and the third defendant is estopped from alleging that it is the owner of the Mercedes Benz and the Opel Astra cars.

[84] It is clear that the two plaintiffs must succeed with their claims.

[85] I now turn to the aspect of costs. The plaintiffs have asked for punitive costs orders against the defendants including an order for costs de bonis propriis against Mr. Omar. The fact that the said defendants operated the fraudulent scheme against unsuspecting members of the public warrants such an order against them. I have already remarked about Mr. Omar. The only reason I will refrain, at present, from ordering Mr. Omar to pay the costs of the action de bonis propriis is because he has not had an opportunity to state his case in this regard before this court. It was argued that this court should refer his conduct to the Law Society for investigation. This the plaintiffs can themselves do, if they so wish.

[86] There is the outstanding issue of the costs in matter 4496/06 before Legodi J. between Omega Motors, being the name under which Van Copenhagen trades, and Noormohammed, as the first respondent, RS Traders, as the second respondent, and HYH being the third respondent therein. In that matter the costs was reserved. It is clear that Van Copenhagen is entitled to those costs on a punitive scale. No costs will be awarded against Noormohammed, however, as it appears that he was cited nominally.

[87] I accordingly make the following orders:

**A. IN MATTER 7167/2006:**

- 1. 1.1 The opposed application for a postponement by the second, third, fourth, fifth and sixth defendants is refused.**
- 1.2 The second, third, fourth, fifth and sixth defendants are to pay the costs of the application for postponement jointly and severally, payment by the one absolving the other.**
- 2. Judgment is granted in favour of the plaintiff Unitrans Motors (Pty) Ltd. t/a Williams Hunt Midrand against the second, third, fourth, fifth and sixth defendants, jointly and severally, payment by the one absolving the other**
  - 2.1 for the payment of R170 000,00 plus interest a tempore mora thereon calculated at the rate of 15,5% per annum from the 23rd November 2005 until date of the payment of the R170 000,00;**
  - 2.2 for the payment of the costs of suit on the scale of attorney and own client.**

**B. IN MATTER 10558/2006:**

- 1. 1.1 The opposed application for a postponement by the second, third, fourth, fifth and sixth defendants is refused.**
- 1.2 The second, third, fourth, fifth and sixth defendants are to pay the costs of the application for postponement jointly and severally, payment by the one absolving the other.**
- 2. Judgment is granted in favour of the plaintiff Hendrik Lindenberg van Copenhagen against the second, third, fourth, fifth and sixth defendants, jointly and severally, payment by the one absolving the other**
  - 2.1 for the payment of R192 121,94 plus interest a tempore mora thereon calculated at the rate of 15,5% per annum from the**

date of service of the summons to the date of payment of the R192 121,94;

2.2 for the payment of the costs of suit on the scale of attorney and own client and the plaintiff is declared a necessary witness for taxing purposes.

**C. IN MATTER 4496/06:**

1. RS Traders CC and HYH Motorcity CC are ordered to pay, jointly and severally, payment by the one absolving the other, the costs of the applicant Hendrik Lindenberg van Coppenhagen t/a Omega Motors, in matter 4496/06 on the scale of attorney and own client.

**P.Z. EBERSOHN  
ACTING JUDGE OF THE HIGH COURT**

**First plaintiff's counsel  
First plaintiff's attorneys**

**Second plaintiff's counsel  
Second plaintiff's attorneys**

**Attorney of 2nd, 3rd, 4th, 5th and 6th defendants**

**Adv. G. van Rhyn  
Otto Krause Inc.  
c/o Rooth & Wessels  
ref. ABT van Der Hoven  
Adv. A.C.P. Wesley  
Andre de Klerk  
(012-365 2512)**

**Zehir Omar**